

A.J.W. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of Mr. W.'s claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, §34A-3-102(2), and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On March 29, 2004, Mr. W. filed an application for occupational disease benefits from Autoliv ASP and its workers' compensation insurance carrier, Travelers Insurance Co. (referred to jointly as "Autoliv" hereafter). Autoliv denied liability, and Judge Marlowe held an evidentiary hearing in the matter on October 5, 2004.

On March 3, 2005, Judge Marlowe ruled that Mr. W.'s claim was barred because he had failed to satisfy the 180-day notice requirement of §34A-3-108(2) of the Act. Mr. W. then filed a motion for Commission review of Judge Marlowe's decision, arguing that he had complied with the Act's notice provisions. This matter was transferred to the Commission on May 24, 2005.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-3-108(2)(a) of the Act bars a claim for occupational disease benefits if the claimant "fails to notify the . . . employer or the division within 180 days after the cause of action arises" Section 34A-3-108(2)(b) defines the date on which a cause of action arises as "the date the employee first suffered disability from the occupational disease and knew, or . . . should have known, that the occupational disease was caused by the employment."

Because Judge Marlowe relies on the foregoing statute to dismiss Mr. W.'s claim, it is essential that the statute's benchmarks be precisely determined and stated. This requires specific findings of: 1) the date on which Mr. W. first suffered disability from his occupational disease, 2) the date on which he knew or should have known that the disease was caused by his employment; and 3) the date on which he notified either the employer or the Commission's Industrial Accidents Division.

Although Judge Marlowe's decision references these factual questions in general terms, her findings lack the specificity necessary to support dismissal of Mr. W.'s claim. The Commission therefore remands this matter to the Adjudication Division to correct these deficiencies and take any additional action appropriate to resolve Mr. W.'s claim.

ORDER

The Commission sets aside Judge Marlowe's decision of March 3, 2005, and remands this matter to the Adjudication Division for further proceedings consistent with this decision.

Dated this 12th day of October, 2005.

R. Lee Ellertson, Commissioner